

Metalite Corporation and General Drivers, Warehousemen & Helpers Local Union No. 89, a/w the International Brotherhood of Teamsters, AFL-CIO. Cases 9-CA-28487-1,-2, and 9-CA-28535

August 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 25, 1992, Administrative Law Judge Arline Pacht issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in opposition to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Metalite Corporation, New Albany, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

James E. Horner, Esq., for the General Counsel.¹

Joseph A. Worthington, Esq. and *Robert J. Schumacher, Esq.* (*Smith & Smith*), of Louisville, Kentucky, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. Upon charges filed on April 23 and 24 and May 8, 1991,² a complaint and notice of hearing issued on June 11,³ alleging that Respondent, Metalite Corporation, violated the National Labor Relations Act, by discriminatorily discharging three employees and threatening employees with loss of jobs. During the hearing, I granted General Counsel's motion to further amend the complaint to allege that the Respondent had unlawfully interrogated an employee. The Respondent submitted timely answers denying the commission of any unfair labor practices.

A trial was held in this matter on October 30 and 31 and May 1, at which time the parties had the opportunity to examine and cross-examine witnesses and introduce documentary evidence. On the entire record, including the parties'

posttrial briefs, my observation of the witnesses' demeanor and under Section 10(c) of the Act, I make the following⁴

FINDINGS OF FACT

I. AS TO JURISDICTION

At all times material herein, Respondent, a corporation, has engaged in the manufacture and distribution of lighting fixture parts at its New Albany, Indiana facility. During the 12 months prior to the issuance of the complaint, Respondent, in the course and conduct of its business operations, sold and shipped from its New Albany facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Indiana. Accordingly, the Respondent admits and I find that the Metalite Corporation is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principal issues to be resolved in this case are:

(1) Whether Respondent violated Section 8(a)(1) and (3) of the Act by unlawfully terminating Gregory Long, Peter Wrocklage, and Rita Grut.

(2) Whether Wrocklage was a statutory supervisor as the Respondent contends.

(3) Whether Respondent independently violated Section 8(a)(1) of the Act by impliedly threatening employees with job loss, and interrogating employee Alan Early about meeting with an NLRB agent.

B. Background

Respondent, a manufacturer of lighting parts, is a closely held corporation whose stock is wholly owned by its president, Marvin Friedman. Friedman's son, Wayne, is vice president, while his wife, Rose Friedman, serves as treasurer and supervises the packing department. At the time of the events giving rise to this proceeding, the Company conducted its operations with a work force of approximately 115 employees, most of whom were assigned to one of three major production departments: press and trim, spinning and finishing (including anodizing and buffing procedures). In addition, there were several maintenance employees and a packing department composed of approximately 15 employees who prepared the lighting parts for shipment.

In addition to the Friedmans, two other officials held senior executive posts: Charles Roberts served as Production Manager and Al Williams held the title of floor supervisor

⁴The General Counsel's exhibits will be cited as G.C. Exh. followed by the appropriate exhibit number; the Respondent's exhibits as R. Exh., and references to the transcripts as TR.

Subsequent to the hearing the General Counsel introduced records showing the disposition of certain cases stemming from the arrest of various Metalite employees. Having received no objection from Respondent, the exhibits are hereby admitted into evidence as G.C. Exhs. 22 to 33.

¹ Referred to as the General Counsel.

² Unless otherwise noted, all events took place in 1991.

³ An order consolidating cases issued on June 26, 1991.

and purchasing manager. Each department had one or two leadmen, while the buffing section also had a foreman, Willie Malone. Whether Wrocklage's duties as leadman in the press and trim department qualified him as a supervisor within the meaning of the Act is at issue in this case.

C. The Discharge of Greg Long

1. Long's union activity

Greg Long was hired in November 1989 and thereafter, worked exclusively in Respondent's press and trim department. Long testified that on becoming interested in union representation, he contacted a Teamsters agent in early April and soon thereafter, received 100 union authorization cards and Teamsters literature in the mail. He gave some of the cards to two coworkers in another department and, in an effort to conceal his activities, asked them to distribute them only to those who could be trusted. During his lunchbreak, Long handed out cards and pamphlets to others in his own department. He also discussed the Union with his fellow workers and attempted to convince them that representation could be beneficial. Long explained that his efforts at secrecy were prompted by a warning from his leadman, Peter Wrocklage, that employees who were involved in past union campaigns, had been terminated.⁵ Apparently, Long's efforts to veil his union activities were unsuccessful, for on the day after he began handing out cards, employees approached him in the plant asking for them.

Long further testified that about a week after his union activity began, he noticed that Marvin and Wayne Friedman were spending more time than usual walking through his work area. In fact, he observed that Marvin and Rose Friedman were arriving at the plant at 9:30 a.m. rather than 12:30 p.m. as was their custom. Marvin Friedman did not deny this assertion. Instead, he explained that he felt it was necessary to spend more time at the plant following a police drug raid at the plant in the latter part of March.

On April 18, less than a week after Long signed an authorization card, he was summarily discharged. The parties' vastly different versions of the events leading up to the discharge are set forth below.

Long testified that on April 18, shortly after a regular break period at approximately 2:50 p.m., Production Manager Roberts asked him to transfer to the buffing department. Although Long often had asked for the opportunity to earn more by transferring to another department, he stated he had never expressed any desire to work in buffing. He told Roberts he was reluctant to accept the more lucrative buffing assignment because in his words, it was a "nasty" place to work.

2. The buffing area

Respondent's buffing department was housed in self-contained quarters comprised of one large room and an adjacent smaller area on the second floor of the facility. Long testified that Respondent routinely advertised for and hired men weighing no less than 190 to 200 pounds for the buffing department because the greatest percentage of the work there required that the employees exert considerable pressure on

their machines to remove a black, greasy compound from the interior portion of the reflector. A small percentage of the buffing work involved polishing the flanges (or rims) of the reflectors, and could be performed by somewhat smaller men, for this work called more for manual dexterity than muscle. Respondent had three regular employees detailed to this work when Long was assigned to join them.

Long testified that he occasionally carried parts to the buffing department but refused to go inside because of the pervasive black dust that was produced by the buffing. He stated that throughout his employment with Respondent, one was greeted by a black cloud when the doors to the buffing room were opened. He further maintained that at the end of the workday, buffers were coated with the black dust.

Three other employees, called as government witnesses, claimed that the conditions in the buffing department through the date of Long's discharge, were as deplorable as he had described them. Wrocklage asserted that "No one wants to go to the Buffing Department. . . . the buffing dust is extremely thick where these men are." (Tr. 191.) He acknowledged that Respondent had installed a new duct system, but maintained that it was not operational in mid-April. Bridwell likened the room to one that had been on fire with soot just hanging in the air. Alan Early added that the Buffing room was dark enough to be hazardous.⁶

Respondent's witnesses, on the other hand, insisted that by April, conditions in the buffing rooms were excellent. Indeed, Marvin Friedman extolled the buffing room environment as "absolutely wonderful." He did concede, however, that a ventilation problem had been detected when inspectors from the National Health and Safety Commission (OSHA) conducted a surprise inspection in December 1990 and determined that respirable dust levels were "slightly" in excess of acceptable norms in the buffing area. In order to comply with OSHA's standards, Respondent installed new ventilation equipment which Friedman maintained, completely rectified the problem prior to March.

An OSHA report, introduced into evidence as General Counsel Exhibit 19, indicates that the ventilatory problems in the buffing room were not as slight as Friedman suggested. Thus, during an earlier visit in August, 1990, the OSHA report states that the failure to clean "Silica and Aluminum dust (which) was allowed to accumulate on light fixtures, floors and machinery in the Buffing Department" constituted a serious violation. In December 1990, inspectors found another "serious" violation in that local exhaust ventilation systems were not used . . . to maintain the exposure" of employees in the east and west rooms" below the prescribed limits for Silica (sic) and respirable dust." Specifically, based on samples taken from two work stations in both parts of the buffing room, OSHA determined that one employee was exposed to respirable dust at "4.6 times the calculated permissible exposure limit" while the second "was exposed to 1.99 times the calculated permissible exposure limit." (G.C. Exh. 19 at p. 6) These violations were supposed to be

⁵Prior to 1991, two union campaigns were mounted at Respondent's facility, both of which failed.

⁶The General Counsel called a fifth witness, Hines, who was still employed by Respondent at the time of the hearing. On the understanding that Hines' testimony would be redundant and cumulative, I granted the General Counsel's request to proffer that, if permitted to testify, Hines would have described the conditions in the buffing room in April in terms substantially similar to those of the previous government witnesses.

abated by March 20. However, it was not until May 8 that Respondent requested that OSHA conduct a followup inspection. That inspection did not take place until September 11, at which time OSHA gave the Company a clean bill of health.

Neither the OSHA report nor any other document of record establish precisely when the adverse conditions in the buffing room were abated. If corrective measures were completed in March, as Friedman claimed, it is curious that Respondent waited until May to request another OSHA review. Further, Respondent failed to introduce any business records which might have established when the new ventilation equipment was installed and running. Consequently, absent documentary proof, I am not persuaded that Marvin and Wayne Friedman's glowing reports about air quality in the buffing room accurately reflected the working conditions there on or about April 18.⁷ Instead, I find Long's and Wrocklage's reports of dismal conditions in the buffing room in mid-April far more reliable. In contrast to Marvin Friedman's penchant for hyperbole and Wayne Friedman's vague generalities, Long and Wrocklage appeared to be credible witnesses whose testimony was reasonable and consistent. Their descriptions were corroborated by three other employees, one of whom still worked for Respondent at the time of this hearing. His testimony, given against his own economic interests, warrants great weight.⁸ Accordingly, I find that as of April 18, the dusty conditions in the buffing room were as Long and his fellow workers described them.

3. Long's transfer to the buffing room

Disregarding Long's hesitancy to accept a transfer to the buffing room, Roberts insisted that they needed reliable people there. When Long asked if he could return to the press and trim department if he was unable to handle the buffing assignment, Roberts assured him they would work something out.

Roberts took Long to Buffing Room Foreman Willie Malone, who, in turn, asked one of the buffing employees to instruct Long on the use of a particular machine. Long testified that he attempted to buff 3/4-inch wide exterior flanges as directed, but, after little more than an hour, realized that his work was not up to par.⁹ Even worse, he found that fumes and dust, fallout produced by the buffing, were permeating the paper fiber filter covering his face, making it difficult for him to breathe.¹⁰ Long explained that he has had a deviated septum since birth. With Long seated less than 4 feet away from me while he testified, I was in an advantageous position to note that his speech had a distinctly nasal quality. Based on this observation, together with finding him to be a trustworthy and sincere witness, I am convinced that he did

suffer breathing difficulties during his stint in the buffing room.

Long further related that he was unable to find a supervisor to obtain permission to leave the shop. After a co-worker told him that the buffers simply left when they wanted to speak with Wayne, Long, too, went to Friedman's office on his own. On failing to find the vice president there, Long returned to his buffing machine, cleaned up and again left the room. On encountering Malone, Long explained he was having difficulty breathing and needed to see Wayne. With apparent indifference, Malone told Long that he had to complete the parts he was buffing before the shift ended. When Long insisted on speaking with Wayne, Malone accompanied him to the office. Long recalled that enroute, they met buffing room employee, John Snyder. Malone ordered Snyder back to work, chastising him for not finishing his quota with a half hour left before the end of the shift. Long testified without controversy that Snyder replied, "F—you. I'm not going to work." (Tr. 132.)

In the office, Malone told the younger Friedman that Long was having a problem. Then, according to Long, without further adieu, Friedman accused him of leaving his work area without permission, rejected his request to return to the press and trim unit and terminated him with a notice which stated that he "left work area without authorization." (G.C. Exh. 9.) This was the only occasion on which Long had been disciplined for any reason during his 18-month tenure with the Respondent.

Malone and Wayne Friedman gave altogether different versions of their dealings with Long which led to his discharge. Malone alleged that Long first came to the buffing room after lunch at approximately 12:30 p.m. The foreman said that he noticed that shortly after Long began working, he left his machine running and was missing for some 35 to 40 minutes. When Long eventually returned, he told Malone he had been in the men's room. At this time, Malone merely gave him a verbal warning.

Malone continued that not 10 minutes later, Long again left his machine. When he returned, he told Malone for the second time that he had gone to the restroom. Malone stated that he then told Long, he had "no other choice but to let you go." He escorted Long to the executive office where he told Wayne Friedman that he was terminating Long for leaving his work assignment. He also informed Friedman that he had "given him several warnings for it and it seems like it doesn't get anyplace."

Friedman added that he was surprised when Malone told him he wanted to discharge Long, but approved the action because he felt constrained to support his foreman. Friedman also explained that the Company had received a special order dated April 1 for approximately 40,000 polished flanges. Since there were only three men in the buffing department to do such work, Respondent needed one or two more men to assist them. Friedman maintained that while heavy men were needed to buff the interior of the reflectors, height and weight were not considerations in buffing the flanges. Hence, he insisted that Long's height and weight—5 feet 6 and 160 pounds—were immaterial for what Respondent needed, and what Long possessed, were "good hands."

⁷ Willie Malone not only claimed that the buffing room was immaculate in April, as far as he was concerned, it was ideal for the entire time Respondent occupied the facility. Not even the Friedmans were so rash as to make such an insupportable claim.

⁸ See, e.g., *Midwestern Mining & Reclamation Co.*, 277 NLRB 221, 243 (1985).

⁹ Long testified without dispute that the 3/4-inch flange was wider than the typical flange on most reflectors. As a consequence, he explained that in order to properly buff these surfaces, he had to exert more than normal pressure which produced greater amounts of dust.

¹⁰ Employees in the buffing department wore fibrous masks which covered the bottom half of their faces.

D. The Discharge of Peter Wrocklage

1. The employees' meet with Wayne Friedman

Wrocklage, first employed by Metalite in 1986, was promoted to a leadman position in the press and trim department in 1987. He recommended that Long be hired and found him to be an excellent worker who was conscientious enough to work overtime without pay to compensate for any time he may have missed. At Robert's request, Wrocklage evaluated Long in 1990 and reported that he was a "very good" employee. (R. Exh. 36.) In 1991, he and Long were driving to and from work together. Consequently, he knew on the afternoon of April 18 that Long had been fired.

The following morning, most of the employees in the press and trim department, including Wrocklage and a second leadman, Don Lambert, agreed that during their 10 a.m. break they would urge Wayne Friedman to rehire Long. Wrocklage explained that the year before, employees in the spinning department met en masse with Friedman and persuaded him to rehire one of their number.

As planned, at the start of the morning break, some 13 to 15 employees gathered outside Friedman's office. According to Wrocklage, Lambert first asked Friedman if the group could meet with him, and when he agreed, they filed into his office in orderly fashion. On being asked why Long was terminated, Friedman answered that he left his job area. Wrocklage told Friedman about Long's breathing problem and Lambert volunteered that Long just had purchased a house. Others pointed out that many employees who had received disciplinary warning notices still were employed at Metalite. Friedman, who reportedly did most of the talking, repeatedly stated that Long was fired for leaving his work station. Wrocklage stated without dispute that throughout the hour long meeting, the employees remained calm and polite and at no time did Wayne appear hostile. At approximately 11 a.m., the men returned to their jobs after Friedman agreed to reconsider the discharge decision.

Friedman's account of this meeting diverged somewhat from Wrocklage's. He contended that no one had requested an appointment; instead, he found approximately 90 percent of the press and trim employees already inside his office when he arrived at 10:10 a.m. He acknowledged that he could have ordered the men back to work "when they first came in the office," and certainly had the authority to disband the meeting at any time. (Tr. 745.) He did not do so, believing it was preferable to address their concerns.¹¹

Friedman testified he checked Long's personnel file after the meeting but found no record of breathing problems, allergies, or nasal surgery. Later the same day, he told his father that he was terribly disappointed that Wrocklage had failed to prepare him for the meeting in which the employees, including the leadman, had "attack(ed)" him, that production had been lost for an hour and that the entire factory had been disrupted. (Tr. 746.)

By his own account, Marvin Friedman was appalled that Wrocklage had displayed such "disgusting misjudgment and

miscalculation" in prompting the employees to storm into the office "without notice . . . announcement (or) . . . prewarning" to engage in "an inquisition." (Tr. 61.) Friedman's condemnation of Wrocklage's conduct was not at all tempered by his purported commitment to Respondent's open door policy between employee and management.¹² Although he confirmed that employees had "complete latitude" to visit their immediate supervisor or come directly to him or his son to clarify any problems, he insisted that such meetings had to be handled properly by first making an appointment. Friedman further stated that he had been questioning Wrocklage's performance for a considerable period of time for he found that the leadman never was available in his department, was not skilled on the machine which he alone used, and was deficient in setting up other machines. Friedman said that Wrocklage's role in the meeting, together with his other alleged shortcomings led him to ask Roberts and Williams to review the leadman's work record.

That same afternoon, a fellow employee suggested to Wrocklage that Long had been fired for distributing union authorization cards. Wrocklage repeated this to Roberts who immediately took him to Marvin Friedman's office. There, Wrocklage again asserted that he believed the cause of Long's discharge was his union activity. Wrocklage testified that Friedman ignored his comment and instead, fumed at him for having participated in the meeting that morning. Wrocklage then left the office, but within a short period of time, Roberts instructed him to return. When he did, he received a notice dismissing him because his "conduct as leadman of the press and trim department is disappointing . . . (he failed) 'to learn all the techniques required . . . (and) displayed poor leadership.'" (G.C. Exh. 13.)

Marvin Friedman alleged that Wrocklage apologized to him for his unseemly conduct that morning and admitted he should have handled the situation differently. Condemning Wrocklage's conduct as "abhorable (sic) . . . astounding and unforgivable" Friedman refused to relent, explaining that Wrocklage's apology was too late and unconvincing. Wrocklage, on the other hand, denied having tendered an apology.

2. Wrocklage's alleged supervisory status

The Respondent contends that regardless of its reasons for discharging Wrocklage, he was a supervisor within the meaning of the Act and, therefore, not entitled to statutory protection. To prove this contention, Respondent introduced, inter alia, a notice which was posted on the Company bulletin board on October 30, 1987 when Wrocklage and two other employees were promoted to leadmen, stating that "We are exceptionally happy to have our men move up from within to a position on the management team." (R. Exh. 16.) A year later, in November 1988, Respondent had Wrocklage sign a memo which outlined his responsibilities. Thereafter, Respondent introduced evidence to show that Wrocklage fulfilled many of the itemized duties.

¹¹ Friedman offered three justifications, each a nonsequitor, to justify his failure to end the meeting: (1) there still were employees in the press and trim department suspected of selling drugs, (2) employees had quit, presumably because of the drug raid, and (3) he felt his supervisors were capable of handling the situation.

¹² The Employee Handbook expressly encourages employee-employer communication in the following terms:

If you desire information or counseling, or just want to talk over a troublesome problem . . . don't hesitate to consult with us . . . If we can help you, we want to do so. (G.C. Exh. 2 at 3.)

Item one on the list authorized the leadman to "recommend the hiring of personnel upon your interview of candidates." (R. Exh. 17.) Wrocklage acknowledged that he occasionally took job applicants on a tour of the plant, but denied that this amounted to an interview. Contradicting Wrocklage's view of his limited role in the hiring process, Respondent produced an employment application which showed that he effectively recommended against hiring an individual who was not offered a job. By the same token, Respondent accepted Wrocklage's recommendation that Long be hired even though he had no manufacturing experience.

The second and third itemized responsibilities set forth in the job description invested leadmen with a role in disciplining and discharging personnel. In this regard, Wrocklage recommended and signed a warning notice to one employee, Donnie Mudd, and subsequently recommended his dismissal. Roberts testified that Mudd was discharged soon thereafter without management making further independent inquiry. Wrocklage prepared the narratives on some of the disciplinary notices, and from the text, it is apparent that he was a direct observer of the misconduct alleged. For example, in one warning notice, Wrocklage wrote "you punched out and left your job at lunch, you did not return after lunch, you did not tell your leadmen or your supervisor that you were not going to return" (R. Exh. 25.) Other disciplinary notices simply bear his signature. In these instances, Wrocklage explained that the warning was written by a management official and given to him to sign as a mere formality.

Another itemized duty required that the leadmen "evaluate personnel for raises and bonuses." To this end, in the summer of 1990, leadmen completed evaluation forms for each employee in their departments.¹³ Wrocklage added a handwritten note on some of the forms recommending that the individual receive a raise. Roberts testified that he and Wayne Friedman relied upon these evaluations in determining whether raises were warranted. Similarly, when management asked him for his opinion about a particular employee, or when employees asked him to intercede on their behalf, Wrocklage prepared brief written requests for raises for various employees, each of whom received a pay increase thereafter. Further, in conformance with item 5 on the job description list, Wrocklage initialed timecards to indicate that overtime was approved.

Wrocklage routinely performed other functions which Respondent claimed were indicia of his supervisory role. Thus, after conferring each morning with Production Manager Roberts about the work to be accomplished that day, Wrocklage detailed specific assignments to the press and trim employees. However, as Wrocklage explained, employees often needed no such instruction for they simply returned to work that was not completed the previous day. If an employee finished his assignment, Wrocklage would shift him to another task, a responsibility noted in item 10 of Respondent's Exhibit 17. Although he spent approximately 90 percent of his time operating a machine in regular production work, Wrocklage was available throughout the day to assist press and trim employees should a problem arise and would check on the employees' product to assure consistency.

¹³ Wrocklage testified that he completed evaluation forms twice but Respondent introduced only one set of such documents.

As prescribed by item 6 of the job description, Wrocklage attended some, but not all, management and departmental meetings. At one such meeting held during the course of the union organization effort, Marvin Friedman asked the participants, including Wrocklage, to read some material titled, "Do's and Don'ts For Supervisors."

Wrocklage maintained that the title of leadman did not place him in management's ranks for he continued to spend 90 percent of his time at a machine in regular production work. Other employees who worked in his department confirmed that the vast proportion of his time was spent in regular production work. Moreover, he was paid an hourly wage rate and time and one-half for overtime, just as other rank-and-file workers were. He had no authority to directly impose discipline or fire anyone. He stated that he simply filled out evaluation forms, wrote recommendations for pay raises or signed disciplinary notices when instructed to do so by a senior official. He further stated that as a rule, he did not know if his recommendations were put into effect. Wrocklage explained that he could not independently award overtime work or authorize payment for it by initialing the employee's timecard without first obtaining Robert's approval. Contrary to provisions in his job description, he did not close and secure the building, nor attend "all" management meetings. A number of employees, including Long, testified that they regarded Roberts as their supervisor, not Wrocklage. However, at one point, Long stated inconsistently that a promotion to a leadman's position would elevate him into the ranks of management.

C. The Discharge of Rita Grut

Rita Grut was hired on February 7 for Respondent's packing department where approximately 15 women cleaned, inspected, and packaged the lighting components for shipment. Ellen Shaw served as acting leadperson until R. Friedman, the regular supervisor, arrived on the scene.¹⁴ A painting department, staffed by three or four employees, adjoined the packing area.

The General Counsel concedes that Grut played no role in the union organizing campaign. Indeed, Grut acknowledged that her concerted activity consisted of talking to her co-workers about unions in favorable terms. Specifically, Grut testified that on the same day that Marvin Friedman gave his antiunion speech, she told a few employees in her department, including Shaw, that she had been a union steward at a previous place of employment, that a union might benefit them, and might improve conditions for women who were not paid equally to men doing the same work. Lastly, she urged them to listen carefully to both sides before making up their minds.

A former employee, Judy Law, corroborated Grut's testimony that she had spoken out on behalf of union membership in general. Shaw, too, recalled having heard that Grut talked about her membership in a union, but said that another employee had relayed this information to her.

On or about April 30, R. Friedman transferred Grut to the Painting Department where she worked with two long-term employees, Tina Rogers and Laverne Frazier. According to

¹⁴ At least until the week prior to Long and Wrocklage's discharge, Mrs. Friedman arrived at the facility at approximately 12:30 p.m. with her husband.

Grut and another former employee, Kitty Bridwell, Rogers, and Frazier were referred to by some as the “Snoop Sisters,” because of their penchant for finding out everything that was happening in the plant. Grut testified that Rogers and Frazier soon began to criticize her work and complained about her production to R. Friedman. After receiving this complaint, R. Friedman spoke to Grut in confidence, telling her that although there were plans to purge the plant of 20 employees, she wanted to retain everyone in packing. She therefore urged Grut to work harder and pay heed to Frazier and Rogers.

Grut stated that try as she might, she was unable to satisfy the two women who continued to give her contradictory orders when she returned to the painting department. According to Kitty Bridwell, Frazier, and Rogers were purposely harassing Grut, for she overheard R. Friedman telling them to be mean to someone whom they wanted to be rid of.

The following day, May 1, Williams asked Grut to report to his office where he gave her what was alleged to be her second warning. The slip stated that her performance was “sub par”; and that noticeable improvement in her productivity had to be shown in the next 2 weeks. Grut remonstrated that she felt she was being harassed because she had told employees to consider the Union’s advantages and had been a union member for 15 years. At this, Williams asked if she thought a union would be good for the plant. Grut said she was unsure but that the employees needed to make up their own minds about the matter.

Grut insisted that she had not been disciplined before, but she apparently was referring to the fact that she had not previously received a written warning. She conceded, however, that she had an encounter with another packing employee which led Ellen Shaw to tell her to “shut up and go back to work.” (Tr. 426.) Grut insisted on bringing that incident to Wayne Friedman’s attention, who resolved the matter by reassigning Grut to a different station in the packing department.¹⁵ Grut apparently did not consider Friedman’s directive as a disciplinary statement.

The following afternoon, after Grut had tiffs with R. Friedman, Frazier, and Rogers, Williams handed her a dismissal notice which briefly stated she was being terminated because she had proved to be unsatisfactory during her probationary period.¹⁶ Williams stated that Shaw, too, had reported to him

that Grut was unable to get along with other employees in the Packing Department.

D. Evidence of Alleged Independent 8(a)(1) Violations

1. Threat of job loss

The consolidated complaint alleges that in mid-April, Marvin Friedman threatened that equipment would be removed from the facility and employees terminated if they selected the Union as their representative. This allegation stems from comments Friedman allegedly made during a meeting with employees on April 26.

Rita Grut and Charles Bridwell both testified about this meeting at which Friedman first addressed the employees about the Respondent’s opposition to the Union’s latest organizational efforts. In particular, Grut recalled that among other remarks, Friedman told the employees that the machinery in the plant was not owned by the Respondent but by other companies. He continued that “if he had to get the machinery . . . we wouldn’t have the wages, and the companies would come and get the machinery . . . [b]ecause they wouldn’t want a union in there . . .” (Tr. 419.)

Bridwell also remembered some of Friedman’s comments at the first of two meetings held with employees about a week after Wrocklage was fired. In particular, Bridwell recalled that Friedman told the assembled workers that the dyes used at Metalite were owned by outside companies or agencies and would withdraw them because of their opposition to unions. Friedman indicated that this would mean that Respondent’s work would be reduced and employees would lose their jobs.

Friedman was not sure he had spoken with employees on April 26. However, in a letter delivered to employees on Monday, April 29, Friedman refers to “his talk to you last Friday” which clearly supports a finding that the meeting took place on April 26.

Apart from his failure to recollect addressing the employees on April 26, Friedman did not deny making the comments which Grut and Bridwell attributed to him. Even if he had, I would not be inclined to believe him for, as I already have indicated, I did not find either of the Friedmans to be credible witnesses.

2. Alleged unlawful interrogation

At the outset of the instant hearing, I granted General Counsel’s motion to amend the consolidated complaint to add a new paragraph 5(b), which alleged that on or about August 9 or 16, Wayne Friedman violated Section 8(a)(1) of the Act by interrogating an employee about possible meetings with a Board agent and whether he was cooperating with the Board in its investigation of Respondent’s alleged unfair labor practices.

In support of this allegation, employee Alan Early testified that on a Wednesday during the first or second week of August, he left work early due to illness. On returning to work

¹⁵ The packing department employees were assigned to work at bench-like tables which each accommodated three or four employees.

¹⁶ Respondent had a 90-day probationary period. Shaw testified that Grut was a difficult and uncooperative employee. She maintained that Grut resisted authority and would not heed reasonable instruction. As Shaw put it, Grut had her own way of doing everything and was very argumentative. Shaw recalled one episode in which she gesticulated, as was her custom, while talking with Grut. Grut angrily warned Shaw not to point a finger in her face. At this juncture, feeling incapable of handling the matter, Shaw took Grut to Wayne Friedman’s office to let him resolve the dispute. Shaw further stated that she reassigned Grut to different work stations, thinking that perhaps the problem was hers and that Grut might get along better with others. However, Shaw maintained that Grut seemed to create problems no matter where she was stationed. Further, Shaw asserted that Grut continually made mistakes. Although she tried to work cooperatively with Grut, Shaw said that she insisted on doing things her own way and took offense when corrected. Former employees Law and Bridwell came to Grut’s defense. Law said that in her view, Grut was a good worker and got along with most of the other em-

ployees. She conceded that a few of the women, including Shaw, had problems with Grut and did not think she was performing well. Similarly, Bridwell rejected the notion that everyone was having difficulties with Grut, or that she rejected authority and was argumentative. Both women confirmed Grut’s view that Frazier and Rogers were unproductive troublemakers.

the following morning, Wayne Friedman summoned him to his office and asked whether he had attended an NLRB meeting the previous afternoon. Early assured Friedman that he had been sick and had gone nowhere else but home. Without naming Long and Wrocklage, Friedman then told Early that the Company discharged one man because he left his work area without permission and another man who "was getting too close to his employees." (Tr. 395.) Early stated he had no difficulty in identifying the men to whom Friedman referred as Long and Wrocklage.

Friedman's version of this incident closely conforms to Early's with one exception: he did not acknowledge actually asking Early if he had attended an NLRB meeting, only whether he left work because he was genuinely ill.

II. DISCUSSION AND CONCLUDING FINDINGS

A. Respondent Unlawfully Threatened Employees

Section 8(c) of the Act protects the expression of views, argument or opinion as long as "such expression contains no threat of reprisal or force or promise of benefit." In other words, an employer's right to free speech is not absolute; it must be balanced against the employees' right to organize or refrain from organizing, free of coercion, restraint and interference. One of the more troubling issues in balancing an employer's rights under Section 8(c) against employees rights under Section 7 is to determine whether an employer's remarks about plant closure during a union organizational campaign are permissible predictions or threats proscribed by Section 8(a)(1). In drawing such distinctions, the Supreme Court provided the following guidance in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969):

[a] prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control If there is an implication that an employer may or may not take action on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts, but a threat of retaliation based on misrepresentation and coercion

As detailed above, Friedman railed against the Union at two employee meetings in late April and early May. At the first such meeting on April 26, he told the employees, inter alia, that companies would remove their dyes from Metalite if the plant was organized which would lead to a loss of business and jobs. Neither when he made the statement, nor at the trial, did Friedman point to any objective evidence to support his remark. Without any doubt, his statement was not based on demonstrably probable consequences, but on rank speculation and a desire to fan employees' fears of job loss. As such, it was an unveiled threat designed to interfere with the employees' exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

B. Respondent Unlawfully Interrogated Early

Standing alone, Wayne Friedman's one question to Alan Early might be regarded as an isolated incident which did not rise to the level of an unfair labor practice. However, Friedman's inquiry must be examined in context. See *Sunny-*

vale Medical Clinic, 277 NLRB 1217, 1218 (1985). Early was not a declared union advocate and the question was not put to him casually on the shop floor. Rather, Friedman, a high-ranking member of management who happened to be the owner's son, summoned Early to his office after the workday had begun, specifically to question him about his whereabouts the previous afternoon. Friedman did not innocently question Early just to find out if he had lied about feeling ill the previous afternoon. His specific intent was to probe whether Early, like Bridwell, had visited the NLRB in preparation for the forthcoming trial. When Early responded negatively, Friedman went on to justify the discharges of Long and Wrocklage, sending Early a clear signal that he, too, could suffer a similar fate. In these circumstances, Friedman's questioning of Early was violative of Section 8(a)(1).

C. The 8(a)(3) Violations

1. Applicable precedents

The amended complaint alleges that the Respondent discharged Long, Wrocklage, and Grut in violation of Section 8(a)(1) and (3). Denying any knowledge that they were engaged in union activity, the Respondent contends that it lawfully terminated each of the alleged discriminatees for reasons that stemmed from their conduct on the job. Where, as here, both lawful and unlawful motives are offered to explain an employer's conduct, the Board requires that the evidence be assessed according to the burden-shifting analysis set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Initially, the General Counsel must make a *prima facie* showing that the employer knew of the employee's protected activity and that this knowledge was a motivating factor in its decision to take discriminatory action. Once the General Counsel has made this showing, "the burden of persuasion shifts to the employer to prove that the employee would have . . . received the . . . claimed discriminatory action in any event because of unprotected conduct." *Champion Parts Rebuilders v. NLRB*, 717 F.2d 845, 849 *fn.* 6 (3d Cir. 1983).

2. Long was discriminatorily discharged

As described above in the findings of fact, Long initiated the organizational effort on behalf of the Teamsters in Respondent's plant. His efforts to keep his activities *sub rosa* met with little success as evidenced by the fact that employees whom he had not contacted sought him out to ask for authorization cards. Further, Al Williams admitted that his secret sources informed him that a union campaign was underway. Surely his informants also would have identified Long as the leader of the prounion movement. Williams, a senior management official who was on the scene during two previous organizational efforts had to be well aware that his employer was inalterably opposed to a union presence in the plant. Therefore, it is inconceivable that he failed to pass on this information to the Friedmans as quickly as it came to his attention.

Apart from any other considerations, the coincidence of timing between Long's discharge and the start of his in-plant union activities a week or two earlier, is suspicious enough to give rise to an inference that Respondent acted out of discriminatory motives. See, e.g., *Abbey's transportation Serv-*

ices, 284 NLRB 698, 699 (1987), enfd. 837 F.2d 575 (2d Cir. 1988).

But there is much more. Respondent's explanation that Friedman merely ratified Al Williams' decision to terminate Long because he absented himself from his work station is preposterous. I have not the slightest doubt that in detailing Long to the buffing room, Respondent set him up to fail.

Respondent claimed that it plucked Long from the Press and Trim Department because it had an emergency buffing order that had to be filled. However, the customer memo upon which Respondent relied was dated April 1. If this order created an emergency, it is difficult to explain why Respondent waited until April 18 to attend to it. Further, it makes little sense that Respondent would assign an inexperienced employee to perform skilled work, particularly if it had to be done in haste.

The most telling proof of Respondent's illegal motivation comes from its decision to fire Long for his first purported offense, when it tolerated far worse behavior from a host of other employees. At the outset, it is important to bear in mind that Long was considered a good employee who had no prior disciplinary problems. His blameless record need only be weighed against the dossiers of Jacob Hutt, Rodney Jones, or Ravone Effinger, to expose the pretextual nature of Respondent's defense. Friedman acknowledged that Effinger's attendance record in 1991 was atrocious. Malone admitted he was his worst disciplinary problem. Moreover, he revealed that he had fired Effinger three times, only to rehire him when he promised to do better. Hutt received 13 written warnings including one for "leaving working stations without authorization" while 10 days before Long's discharge, Jones was admonished for leaving the plant and not returning. All three men still were employed at Metalite at the time of trial. Yet, Long, who had no disciplinary record, was offered no second chance.

In this same vein, Respondent continued to employ individuals who were convicted of drug offenses, notwithstanding Marvin Friedman's announcement that he would not tolerate such persons in his plant. Respondent correctly submits that under guidelines of the Equal Employment Opportunity Commission, the Company would be remiss if it fired employees on the basis of arrest record alone. However, the General Counsel offered evidence that four of those arrested were convicted and at least one of those convicted returned to the plant. Marvin Friedman appeared to have little interest in learning what ultimately happened to the 15 employees involved, thereby suggesting that Respondent was far more concerned with ridding itself of a union sympathizer than a convicted criminal.

Ironically, while Malone was dragooning Long to the office, they encountered an employee who cursed the foreman and flatly spurned his order to return to work. Malone ignored this brazen misconduct, apparently finding Long's conduct more offensive. Malone's hard-nosed reaction to Long's alleged wrongdoing seems out of character for someone who himself turned to his employer for understanding and a helping hand when he was in trouble.

Wayne Friedman's assertion that he felt constrained to support his foreman's decision to terminate Long is ludicrous. From his demeanor and testimony in this trial, it was very clear that it was Malone who deferred to the Friedmans, not the other way around.

Friedman had the authority to countermand Malone's decision. He apparently felt no need to consult with Malone when he promised the workers the following morning that he would reconsider Long's discharge. As a manager, it makes little sense that he would allow an employee whose work record was exemplary to be fired after one ostensible slip.¹⁷ At a minimum, he could have suggested that Long be reassigned to Press and Trim.

Friedman implied that he might have rehired Long if his application form indicated he had a respiratory problem. If Friedman was genuinely willing to investigate this claim, it would have been far more reasonable for him to speak with Long directly, rather than rely on the presence or absence of checkmarks in appropriate boxes on an employment form. Having conspired to fire Long, a model employee, on a trumped up excuse, in order to purge a union activist from its midst, it is hardly likely that Respondent seriously considered rehiring him, whether or not his breathing difficulties were substantiated.

Based on all of the above, I find that the reason Respondent offered for dismissing Long was pretextual. He was fired for only one reason: he dared to engage in organizing activities on behalf of the Teamsters. It follows that in discharging him, Respondent violated Section 8(a)(1) and (3). *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

Wrocklage's Discharge Is Unprotected

The Respondent submits that Wrocklage was a supervisor within the meaning of the Act and, therefore, not entitled to the protections afforded by the Act. Thus, the question of Wrocklage's employment status must be resolved as a threshold issue before reaching the bona fides of his discharge.

Under Section 2(11), a supervisor refers to:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or adjust their grievances or effectively to recommend such action, if . . . such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well settled that to be classified as a supervisor, a person need not meet all the criteria set forth in the statutory definition. What is essential is that the supervisor exercise independent judgment to a significant degree in performing one or more of above-described duties. "The exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee." *Somerset Welding & Steel*, 291 NLRB 913 (1988). Although it is a close question and not altogether free of doubt, after carefully weighing Wrocklage's responsibilities against the guidelines of Section 2(11), I am constrained to conclude that he performed some functions which traditionally mark a low-level supervisor.

To be sure, the greatest percentage of Wrocklage's workday was spent in operating a machine for which he was paid

¹⁷ I do not believe that Long left his work station for an extended period of time as Malone claimed. Even if he had, Respondent imposed a sanction which far outweighed the discipline dispensed to other employees.

on an hourly basis just like the other employees. Moreover, in distributing work assignments passed on to him by Roberts, he simply served as a conduit, performing a function by virtue of his greater experience in the department. Since the employees generally knew what tasks they were to perform, the distribution of work apparently did not entail the exercise of independent judgment. *Id.* at 914; *John N. Hansen Co.*, 293 NLRB 63, 64 (1989). Moreover, he could not grant overtime or authorize an employee to take time off without first obtaining Roberts' consent. His signing timecards also was "routine or clerical in nature and insufficient to establish supervisory authority." *John N. Hansen Co.*, *supra*.

The General Counsel submits that Wrocklage's signature on disciplinary warnings prepared by senior officials, was a mere formality. However ministerial this task may have been, Respondent's officials apparently regarded his signature on the warning as a necessary part of the process and confirmation that the notice went through the proper managerial channels before it issued. If Wrocklage did not occupy some role in the managerial hierarchy, there would have been no reason for his superiors to require that his signature consistently appear on the various disciplinary notices.

Moreover, Wrocklage was not always a passive actor in the disciplinary process. The record establishes that on occasion, he initiated disciplinary action and even effectively recommended that an employee in his department be fired. Further, the evidence indicates that Wrocklage played a meaningful role in the hiring process, for from time to time, he interviewed and recommended or disapproved job applicants for employment.¹⁸ Wrocklage maintained that he never sat down and interviewed anyone, but evaluating the worth of a prospective employee need not take place in a formal setting, or in a sitting position. It is enough that he assessed applicants while touring the plant with them; that thereafter, he communicated his views to upper echelon management, and that they then relied on his judgments.

Wrocklage also played an integral role in the job evaluation process by filling out evaluation forms for each employee in his department. Wayne Friedman's testimony that he relied on these forms to determine whether a pay raise would be granted was uncontested. While Wrocklage was not responsible for the final decision with respect to wage increases, he effectively contributed to them for there is no suggestion that management conducted an independent evaluation prior to making its determination. *Cf. Passavant Health Center*, 284 NLRB 887, 890 fn. 5 (1987). In addition, the record shows, and Wrocklage conceded, that even apart from the written evaluation process, men in his department turned to him to intercede on their behalf and request that they receive pay raises. In at least one case, Wrocklage's intervention was successful.

Wrocklage obviously felt closer to the men in his department than he did to the senior officials in the plant and for a substantial part of his workday, was involved in work no different than that performed by other employees in Press and Trim. However, while he had not ascended very far up Respondent's bureaucratic ladder, he did perform some supervisory functions which separated him from the rank and file. Thus, he was a low-level supervisor, he was a super-

visor nonetheless within the meaning of Section 2(11) of the Act. I have not the slightest doubt that Wrocklage was terminated for engaging in protected, concerted activity by challenging Respondent's unfair termination of Long. However, under the authority of *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), I am constrained to conclude that he may not invoke the Act's protections to protest his discharge. It follows that the allegations in the complaint related to his wrongful termination must be dismissed.

Grut Was Not Unlawfully Discharged

The propriety of Grut's discharge, like Long's, must be evaluated in light of the standards articulated in *Wright Line*, *supra*. Thus, the General Counsel bears the initial burden of showing that the predominant motive for Grut's termination was her union activity.

Unlike Long, Grut was not deeply immersed in union activity. However, her coworkers were aware of her sympathetic approach to union representation. Shaw, acting lead person in Friedman's absence, acknowledged that she, too, had heard that Grut had expressed pronoun sentiments. More importantly, Al Williams, one of Respondent's senior officials, did not dispute the fact that Grut told him 1 day before he terminated her that she had been a long-term union member at her previous place of employment. His knowledge, together with Respondent's patent antiunion bias, is sufficient to support the inference that she was discharged in order to remove another union sympathizer from the plant.

In defending the decision to fire Grut, Respondent relied principally on Shaw's testimony that Grut was an argumentative and uncooperative employee who did not take direction well and who was continually at loggerheads with fellow workers. I found Shaw to be a very credible witness who seemed to blame herself for failing to find a satisfactory way to establish a sound working relationship with Grut. I was particularly impressed that Shaw decided to transfer Grut to another work stations on the chance that she, rather than Grut, was responsible for the friction between them. In other words, she gave Grut the benefit of the doubt and made sure she had an opportunity to succeed by working with others with whom she might feel more comfortable. This was not the conduct of a person who is acting out of discriminatory motives. Moreover, Shaw's problems with Grut began soon after she was employed and before she had revealed her union sentiments. Having observed the manner in which both women in conducted themselves in the courtroom, I am convinced that Shaw's difficulties with Grut had nothing to do with her expressed union sympathies. If Shaw, who seemed quite even-tempered, was unable to maintain an equitable relationship with Grut, then it is reasonable to believe, as Shaw testified, that other women in the packing department had similar problems working with her. Even Judy Law, who testified in Grut's behalf, admitted that Grut did not get along well with some employees and had been involved in several arguments with her coworkers. She also confirmed that Shaw had criticized Grut's performance. Law's testimony in this regard is particularly revealing because she had every reason to be antagonistic to the Respondent.¹⁹ Thus, Shaw's testi-

¹⁸The record is silent as to how frequently or infrequently Wrocklage was asked to assess job applicants.

¹⁹On the recommendation of her boyfriend, a police detective, Law was hired by Al Williams to investigate whether employees in the plant were continuing to sell drugs. According to Law, she was

mony goes far to support Respondent's theory that Grut was discharged for her poor work and fractious temperament.

It is important to note that Williams prepared the May 1 warning for Grut which criticized her productivity even before she revealed her union sentiments to him. Moreover, the disciplinary notice gave her an additional 2 weeks to prove herself. If Respondent was intent on firing Grut because of her union sentiments, it seems illogical that she would be given this opportunity to improve her performance.

In defending Grut, both Law and Bridwell maintained that she was a hard worker. It may well be that Grut tried her best; yet, her best was not good enough according to Shaw, who had a more seasoned eye than either Law or Bridwell. Bridwell also asserted that she overheard Friedman plotting with Frazier and Rogers to harass Grut in order to get rid of her. I am reluctant to rely on Bridwell's testimony in this regard for she failed to mention this potentially damaging information until she was recalled on rebuttal during the final moments of the hearing. It is difficult to imagine that she somehow forgot such critical evidence during her direct examination. Accordingly, I conclude that the Respondent has satisfied its burden of showing that it would have terminated Grut in any event for reasons unrelated to her protected activity.

CONCLUSIONS OF LAW

1. The Respondent, Metalite Corporation, is an employer engaged in commerce within the meaning of Section (2), (6), and (7) of the Act.

2. General Drivers, Warehousemen & Helpers, Local Union No. 89, a/w International Brotherhood of Teamsters, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening employees with job loss in order to discourage them from supporting the Union.

4. Respondent violated Section 8(a)(1) of the Act by interrogating an employee whether he had met with an agent of the National Labor Relations Board.

5. Respondent violated Section 8(a)(1) and (3) of the Act by discharging Greg Long for engaging in union activity.

6. The unfair labor practices outlined above affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent did not violate the Act by discharging Peter Wrocklage and Rita Grut.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, the Respondent shall be directed to offer employee Greg Long immediate and full reinstatement to his former position, or if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed. Further the Respondent shall be ordered to make him whole for any loss of earnings and other benefits, computed on a quarterly

abruptly terminated after she and her boyfriend had a serious falling out.

basis from the date of his discharge to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be instructed to remove from its files any reference to Long's unlawful discharge and notify him that this has been done and that any such documents will in no way be used against them.

Lastly, the Respondent shall be ordered to post the notice appended to this Decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, Metalite Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily discharging employees because of union activities.

(b) Threatening employees with loss of jobs and discharge if they support a union or seek union representation.

(c) Interrogating employees about whether they have met with agents of the Board.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Greg Long immediate and full reinstatement to former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to seniority or any other rights or privileges previously enjoyed, and make whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section.

(b) Remove from its files any reference to the unlawful discharge and notify Greg Long in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in New Albany, Indiana, copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken

²⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violation of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize, form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Teamsters Local Union No. 89 or any other union.

WE WILL NOT threaten you with job loss or discharge if you join or support Teamsters Local Union No. 89 or any other union.

WE WILL NOT interrogate you about whether you have met with agents of the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT offer Greg Long immediate and full reinstatement to former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from discharge, less any net interim earnings, plus interest.

WE WILL NOT notify Greg Long that we have removed from our files any reference to discharge and that the discharge will not be used against in any way.

METALITE CORPORATION